CF0000063127

(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR [M.P.]

Criminal Appeal No.526 /2000

Division Bench (riminal)

(CRIMINAL APPEAL U/S 374(2) OF THE CODE OF CRIMINAL PROCEDURE)

Appellants : Ramnalee Kristiya @ Krishna S/o Shri Poocham @ Poochariya, by cast Kunbi, Aged about 27 years R/o Mamdi Gudapara, P.S. Bhopal Pattnam District Dantiwada (M.P.)
(in Jail)

VERSUS

Respondent : State of Madhya Pradesh
P.S. Bhopal Pattanam District Bastar (M.P.)

CONVICTION	SENTENCE
U/S. 302 IPC	R.I. for Life Imprisonment and RS 500/- fine in default of R.I. for ~~five month~~ one year

(Against the Judgement dated 29 / 1 / 2000 in S. T. No. 116/99 , State of M.P. Vs. Ramnalee, passed by the learned Session Judge Bastar Jagdalpur district Jagadalpur M.P. Matrei mathur, convicting and sentencing as mentioned above, the appellants prefer this appeal on the following facts and grounds)

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(15)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.A. NO. 526 **सन् 2000**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

13-9-2006

Shri Kalyan Kalamkar, Advocate appears on behalf of Shri Abhijeet Sarkar, Advocate for the appellant.

Shri U.K.S. Chandel, Panel Lawyer for the State/respondent.

Oral Judgment dictated on *Dais*.

PER L.C. BHADOO, J.

This appeal is directed against the judgment of conviction and order of sentence dated 29-1-2000 passed by the 3rd Additional Sessions Judge, Bastar at Jagdalpur, in S.T. No.116/99 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing murder of Pujari Chandraiyya, sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year.

The case of the prosecution, in brief, is that at about 6.30 a.m. when deceased Pujari Chandraiyya and his family members were sitting in the house and warming their bodies before the fire, the accused/appellant, all of a sudden, came on the scene carrying a club in his hand and all of a sudden, attacked the deceased with the club on his head and ran away.

The matter was reported by PW-2 Pujari Krishnarao to the Police Station Bhopalpatnam. Receiving this report, First Information Report (Ex.-P/2) was registered by the Station House Officer under Section 307 of the I.P.C.. He left for the scene of occurrence and sent Pujari Chandraiyya to the Primary Health Centre, Bhopalpatnam, where doctor examined the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

injuries and he prepared the injury report (Ex.-P/7). Thereafter, he was referred to the Maharani Hospital, Jagdalpur where he was admitted for treatment, however, on 14-1-99, he succumbed to the injuries. Accordingly, merg intimation (Ex.-P/9) was registered, after giving notice to the Panchas, the Investigating Officer prepared Panchanama Ex-P/14 of the dead body of the deceased. The postmortem of the dead body of the deceased was conducted by PW-1 Dr. M. A. H Rizvi and he prepared postmortem report Ex.-P/1 in which he opined that cause of death was shock and haemorrhage as a result of injuries on the head. Club, weapon of offence, was taken into possession under Ex.-P/3 from the place of occurrence. Blood stained woolen cap of deceased Pujari Chandraiyya was taken into possession under Ex.-P/4. The site plan Ex.-P/5 was prepared. Club and woolen cap were sent for chemical examination to the Forensic Science Laboratory, Raipur, from where report Ex.-P/13 was received.

After completion of the investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Dantewada, who in turn, committed the case to the Sessions Judge, Jagdalpur, from where learned 3rd Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 10 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. However, learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused as mentioned in para-1 of this judgment.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have heard learned counsel for the parties and perused the record.

The homicidal death of the deceased has not been disputed. Apart from that, from the medical evidence of PW-1 Dr. Rizvi, who has stated that he conducted postmortem on the dead body of the deceased, he found that there was stitched wound on left parietal region, bone beneath the said wound was found fractured, the deceased died due to that injury, as also the evidence of eyewitnesses namely, PW-4 Pujari Anjaiyya, PW-5 Pujari Laxmi Devi, PW-6 Ramesh Kumar and PW-7 Parmel Rajesh, it is established that the death of the deceased was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, PW-2 Pujari Krishnarao, son of the deceased, PW-4 Pujari Anjaiyya, son of the deceased, PW-5 Pujari Laxmi Devi, wife of the deceased, PW-6 Ramesh Kumar, nephew of the deceased and PW-7 Parmel Rajesh, son-in-law of the deceased, who witnessed the crime, have stated that the accused, all of a sudden, came with a club in his hand and all of a sudden, attacked the deceased on his head, as a result of which he received injury on left parietal region and blood started oozing out of the injury. He was taken to the Primary Health Centre, Bhopalpatnam from where he was referred to the Maharani Hospital, Jagdalpur where he succumbed to the injuries. In the cross-examination of these eyewitnesses, the defence has not been able to elicit any circumstance which makes the evidence of these witnesses unreliable or untrustworthy, therefore, to this extent, we do not find any illegality or infirmity in the judgment of the trial Court.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the accused/appellant argued that if the prosecution case is taken as it is, even then offence under Section 302 of the I.P.C. was not made out against the accused/appellant for the reason that there was no animosity between the deceased and the accused. Moreover, the accused was son-in-law of the deceased and even material witnesses have stated that they do not know as to why the accused assaulted the deceased and he assaulted only once, therefore, intention to cause death is missing in this case, as such, offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C..

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused the evidence. Perusal of the evidence shows that there was no animosity amongst the deceased and the accused. The deceased along with his family members was warming himself before the fire, at that time, the accused came, all of a sudden, carrying a club in his hand, without any rhyme or reason, he assaulted the deceased on his head only once and ran away. No evidence has been adduced by the prosecution that the accused had any intention or came with pre-meditation or preparation to cause death of the deceased. The accused ran away after throwing club on the spot after attacking the deceased only once and the deceased died after 2 days of the incident. In the circumstances, it cannot be inferred that the accused assaulted the deceased with the intention to cause his death or cause such injury which was likely to cause death in all probabilities. From the manner in which the accused assaulted the deceased with club on his head, it can safely be inferred that the accused had knowledge that by assaulting the deceased on his head with a club, he may likely to cause death, therefore,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

offence against the accused/appellant under Section 304 Part-II of the I.P.C. was made out.

For the foregoing reasons, conviction and sentence imposed upon the accused/appellant cannot be sustained.

In the result, the appeal partly succeeds. The conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside, instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 7 years. As per the record, the accused is in detention since 13-1-99 thereby he has already undergone the sentence imposed upon him, therefore, the accused/appellant be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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21/9/06